

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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SHAWN EUGENE WIMBERLY,

Petitioner,

v.

Case No. 93-50028-4

UNITED STATES OF AMERICA,

Respondent.

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**OPINION AND ORDER ADOPTING THE MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION AND DENYING PETITIONER'S  
"MOTION TO VACATE UNDER 28 U.S.C. § 2255"**

Petitioner Shawn Eugene Wimberly filed his "Motion to Vacate Under 28 U.S.C. § 2255" on February 28, 2005. Following this, the court referred the matter to Magistrate Judge Steven D. Pepe. On March 17, 2009, Magistrate Judge Pepe issued a Report and Recommendation ("R&R"), in which he recommended that the court deny Petitioner's motion. Pursuant to 28 U.S.C. § 636(b)(1) and Eastern District of Michigan Local Rule 72.1(d)(2), Petitioner then had ten days in which to file objections to the R&R. This deadline has long since passed, and Petitioner has filed no objections to the R&R; Petitioner has thus also waived any further appeal rights. *Thomas v. Arn*, 474 U.S. 140, 55 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir 1981). Having reviewed the file and the R&R, the court concludes that the findings and conclusions of the magistrate judge are correct. The court will therefore adopt the R&R and deny Petitioner's motion.<sup>1</sup> Accordingly,

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<sup>1</sup>The failure to object to the magistrate judge's report releases the court from its duty to independently review the motion. *Thomas*, 474 U.S. at 149.

IT IS ORDERED that the Magistrate Judge's Report and Recommendation [Dkt. # 638] is ADOPTED AND INCORPORATED BY REFERENCE.

IT IS FURTHER ORDERED Defendant's "Motion to Vacate Under 28 U.S.C. § 2255" [Dkt. # 593] is DENIED.<sup>2</sup>

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: April 30, 2009

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 30, 2009, by electronic and/or ordinary mail.

S/Lisa G. Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522.

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<sup>2</sup>A separate "Order Closing Case in Lieu of Judgment" will issue.